

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PURZEL VIDEO GMBH,

Plaintiff,

vs.

DENNIS MARTINEZ,

Defendant.

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Case No. 4:13-CV-1668 (CEJ)

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion for default judgment against defendant Dennis Martinez, pursuant to Fed.R.Civ.P. Rule 55(b)(1).

The plaintiff initiated this action was on August 23, 2013 against a defendant identified as "John Doe Subscriber Utilizing IP Address 99.63.5.25." Plaintiff served a third party subpoena on AT&T Internet Services (AT&T) for the purpose of identifying the user of the defendant IP Address. AT&T identified Dennis Martinez and plaintiff subsequently filed an amended complaint naming Martinez as the defendant. The summons and a copy of the complaint were served on defendant on January 15, 2014. Defendant did not file an answer or other responsive pleading or seek additional time to do so. Upon plaintiff's motion, the Clerk of Court entered default against defendant on February 13, 2014. Plaintiff filed the instant motion for entry of default judgment on March 13, 2014. Defendant has not filed a response to the motion and the time for doing so has expired.

Plaintiff brings this action asserting copyright infringement in violation of the United States Copyright Act of 1976 (Copyright Act), 17 U.S.C. §§ 101 *et seq.* Plaintiff seeks statutory damages, attorneys' fees, costs, and injunctive relief. Pursuant to 17 U.S.C. § 504(c)(1), plaintiff "may elect, at any time before final judgment is rendered,

to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action . . . in a sum of not less than \$750 or more than \$30,000 as the court considers just.” Section 504(c)(2) allows a court, in its discretion, to increase the award of damages by an amount of not more than \$150,000 if the court finds that the violation was committed wilfully. The Copyright Act also entitles plaintiff to the recovery of full costs, including reasonably attorneys fees’, and injunctive relief. 17 U.S.C. §§ 502, 505.

The defendant’s default constitutes an admission of the allegations of plaintiff’s complaint. See Taylor v. Ballwin, 859 F.2d 1330, 1333 (8th Cir. 1988). Thus, for the purposes of this action, it is established that plaintiff is the copyright owner of five motion pictures and that defendant unlawfully reproduced and distributed the content of those motion pictures to third-parties by means of BitTorrent, an interactive peer-to-peer file transfer technology protocol. Infringement of two of the motion pictures occurred after defendant was notified of this action by AT&T.

Plaintiff seeks statutory damages in the amount of \$150,000, representing \$30,000 per willful infringement. The Court finds this request to be excessive. Notwithstanding plaintiff’s general assertion that its actual damages “far exceed \$150,000,” plaintiff has not presented the Court with a calculation of lost revenues or any evidence showing that defendant profited from the infringement. See Broadcast Music, Inc. v. Edcon Enterprises, 4:11-CV-1950 (E.D. Mo. Jan. 9, 2013) (factors to consider in awarding statutory damages include defendant’s profits, plaintiff’s lost revenues, and defendant’s willfulness). However, the Court finds that defendant’s failure to cease his infringement after notification of this action by AT&T and his failure to respond to the allegations of the complaint, justifies an award of statutory damages

in the amount of \$30,000 and equitable relief in the form of an injunction. See e.g. Litecubes, LLC v. Glowstickfactory.com, 4:03-CV-892 (E.D. Mo. Dec. 9, 2003). Furthermore, pursuant to the affidavit of damages submitted in support of the motion for default judgment, plaintiff has sufficiently established that it incurred \$1,033.60 in costs and \$2,280.00 in attorneys' fees. See Doc. #20, Affidavit of Sarah Burns. Thus, plaintiff is entitled to a judgment of default in the total amount of \$33,313.60.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for default judgment [Doc. #19] is granted in part and denied in part.

IT IS FURTHER ORDERED that plaintiff is entitled to recover from defendant statutory damages in the amount of \$30,000.00, costs in the amount of \$1,033.60, and attorneys' fees in the amount of \$2,280.00.

A judgment in accordance with this memorandum and order will be entered separately.


CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 4th day of April, 2014.